

SENATE BILL No. 135

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-3; IC 16-18-2; IC 16-28-14.7; IC 34-30-2-67.7; IC 35-52-16-16.5.

Synopsis: Health facility employee criminal background check. Requires a health facility to obtain a national criminal history background check or an expanded criminal history check for the health facility's employees. Provides immunity to persons: (1) for denying or terminating employment because of another person's criminal history; or (2) for reporting to or participating in the proceedings of the state department of health or the registry of nurse aides.

Effective: July 1, 2015.

Randolph

January 6, 2015, read first time and referred to Committee on Civil Law.



First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 135

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 10-13-3-16, AS AMENDED BY P.L.197-2007,
- 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2015]: Sec. 16. (a) As used in this chapter, "qualified entity"
- 4 means a business or an organization, whether public, private, for-profit,
- 5 nonprofit, or voluntary, that provides care or care placement services.
- 6 (b) The term includes the following:
- 7 (1) A business or an organization that licenses or certifies others
- 8 to provide care or care placement services.
- 9 (2) A home health agency licensed under IC 16-27-1.
- 10 (3) A personal services agency licensed under IC 16-27-4.
- 11 **(4) A health facility licensed under IC 16-28-2.**
- 12 SECTION 2. IC 10-13-3-39, AS AMENDED BY P.L.155-2011,
- 13 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 14 JULY 1, 2015]: Sec. 39. (a) The department is designated as the
- 15 authorized agency to receive requests for, process, and disseminate the
- 16 results of national criminal history background checks that comply with



1 this section and 42 U.S.C. 5119a.

2 (b) A qualified entity may contact the department to request a
3 national criminal history background check on any of the following
4 persons:

5 (1) A person who seeks to be or is employed with the qualified
6 entity. A request under this subdivision must be made not later
7 than three (3) months after the person is initially employed by the
8 qualified entity.

9 (2) A person who seeks to volunteer or is a volunteer with the
10 qualified entity. A request under this subdivision must be made
11 not later than three (3) months after the person initially volunteers
12 with the qualified entity.

13 (3) A person for whom a national criminal history background
14 check is required under any law relating to the licensing of a
15 home, center, or other facility for purposes of day care or
16 residential care of children.

17 (4) A person for whom a national criminal history background
18 check is required for purposes of placement of a child in a foster
19 family home, a prospective adoptive home, or the home of a
20 relative or other caretaker, or for purposes of a report concerning
21 an adoption as required by IC 31-19-8.

22 (c) A qualified entity must submit a request under subsection (b) in
23 the form required by the department and provide a set of the person's
24 fingerprints and any required fees with the request.

25 (d) If a qualified entity makes a request in conformity with
26 subsection (b), the department shall submit the set of fingerprints
27 provided with the request to the Federal Bureau of Investigation for a
28 national criminal history background check. The department shall
29 respond to the request in conformity with:

30 (1) the requirements of 42 U.S.C. 5119a; and

31 (2) the regulations prescribed by the Attorney General of the
32 United States under 42 U.S.C. 5119a.

33 (e) Subsection (f):

34 (1) applies to a qualified entity that:

35 (A) is not a school corporation or a special education
36 cooperative; or

37 (B) is a school corporation or a special education cooperative
38 and seeks a national criminal history background check for a
39 volunteer; and

40 (2) does not apply to a qualified entity that is a:

41 (A) home health agency licensed under IC 16-27-1; ~~or~~

42 (B) personal services agency licensed under IC 16-27-4; **or**



(C) health facility licensed under IC 16-28-2.

(f) After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall make a determination whether the person who is the subject of a request has been convicted of:

- (1) an offense described in IC 20-26-5-11;
- (2) in the case of a foster family home, an offense described in IC 31-27-4-13(a);
- (3) in the case of a prospective adoptive home, an offense described in IC 31-19-11-1(c);
- (4) any other felony; or
- (5) any misdemeanor;

and convey the determination to the requesting qualified entity.

(g) This subsection applies to a qualified entity that:

- (1) is a school corporation or a special education cooperative; and
- (2) seeks a national criminal history background check to determine whether to employ or continue the employment of a certificated employee or a noncertificated employee of a school corporation or an equivalent position with a special education cooperative.

After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department may exchange identification records concerning convictions for offenses described in IC 20-26-5-11 with the school corporation or special education cooperative solely for purposes of making an employment determination. The exchange may be made only for the official use of the officials with authority to make the employment determination. The exchange is subject to the restrictions on dissemination imposed under P.L.92-544, (86 Stat. 1115) (1972).

(h) This subsection applies to a qualified entity (as defined in IC 10-13-3-16) that is a public agency under IC 5-14-1.5-2(a)(1). After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall provide a copy to the public agency. Except as permitted by federal law, the public agency may not share the information contained in the national criminal history background check with a private agency.

(i) This subsection applies to a qualified entity that is a:

- (1) home health agency licensed under IC 16-27-1; or
- (2) personal services agency licensed under IC 16-27-4.

After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall make a determination whether the applicant has been convicted of an



offense described in IC 16-27-2-5(a) and convey the determination to the requesting qualified entity.

(j) This subsection applies to a qualified entity that is a health facility licensed under IC 16-28-2. After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall make a determination whether the applicant has been convicted of an offense described in IC 16-28-14.7-3 and convey the determination to the requesting qualified entity.

(k) The department:

(1) may permanently retain an applicant's fingerprints submitted under this section; and

(2) shall retain the applicant's fingerprints separately from fingerprints collected under section 24 of this chapter.

SECTION 3. IC 16-18-2-121.3, AS ADDED BY P.L.42-2011, SECTION 35, IS AMENDED TO READ AS FOLLOWS [JULY 1, 2015]: Sec. 121.3. "Expanded criminal history check" **means the following:**

(1) For purposes of IC 16-27-2, ~~has~~ the meaning set forth in IC 16-27-2-0.5.

(2) **For purposes of IC 16-28-14.4, the meaning set forth in IC 16-28-14.7-1.**

SECTION 4. IC 16-18-2-244.5, AS ADDED BY P.L.197-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 244.5. "National criminal history background check" **means the following:**

(1) For purposes of IC 16-27-2, ~~has~~ the meaning set forth in IC 16-27-2-2.1.

(2) **For purposes of IC 16-28-14.7, the meaning set forth in IC 16-28-14.7-2.**

SECTION 5. IC 16-28-14.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 14.7. Criminal Background Checks of Employees

Sec. 1. As used in this chapter, "expanded criminal history check" means a criminal history check of an individual, obtained through a private agency, that includes the following:

(1) A search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided.

(2) A search of the records maintained by all counties or similar governmental units in another state, if the individual



1 who is the subject of the background check resided or worked
2 in another state.

3 Sec. 2. As used in this chapter, "national criminal history
4 background check" means the determination provided by the state
5 police department under IC 10-13-3-39(j).

6 Sec. 3. (a) A person may not operate a health facility if the
7 person has been convicted of any of the following:

8 (1) Rape (IC 35-42-4-1).

9 (2) Criminal deviate conduct (IC 35-42-4-2) (repealed) or
10 other sexual conduct (IC 35-31.5-2-221.5).

11 (3) Exploitation of an endangered adult (IC 35-46-1-12).

12 (4) Failure to report battery, neglect, or exploitation of an
13 endangered adult (IC 35-46-1-13).

14 (5) Theft (IC 35-43-4), if the person's conviction for theft
15 occurred less than ten (10) years before the date of submission
16 by the person of an application for licensure as a health
17 facility.

18 (b) A person who knowingly or intentionally violates this section
19 commits a Class A misdemeanor.

20 Sec. 4. (a) A person who operates a health facility shall apply,
21 not more than three (3) business days after the date that an
22 employee who will have direct contact with a patient begins
23 employment, for a copy of the employee's national criminal history
24 background check or an expanded criminal history check.

25 (b) A health facility may not employ a person for more than
26 three (3) business days without applying for a national criminal
27 history background check or an expanded criminal history check.

28 Sec. 5. (a) Except as provided in subsection (b), a person who
29 operates a health facility may not employ a person who has direct
30 contact with a patient if that person's national criminal history
31 background check or expanded criminal history check indicates
32 that the person has been convicted of any of the following:

33 (1) Rape (IC 35-42-4-1).

34 (2) Criminal deviate conduct (IC 35-42-4-2) (repealed) or
35 other sexual conduct (IC 35-31.5-2-221.5).

36 (3) Exploitation of an endangered adult (IC 35-46-1-12).

37 (4) Failure to report battery, neglect, or exploitation of an
38 endangered adult (IC 35-46-1-13).

39 (5) Theft (IC 35-43-4), if the conviction for theft occurred less
40 than ten (10) years before the person's employment
41 application date.

42 (6) A felony that is substantially equivalent to a felony listed



in:

(A) subdivisions (1) through (4); or

(B) subdivision (5), if the conviction for theft occurred less than ten (10) years before the person's employment application date;

for which the conviction was entered in another state.

(b) A health facility may not employ a person who has direct contact with a patient for more than twenty-one (21) calendar days without receipt of that person's national criminal history background check or expanded criminal history check unless the state police department, the Federal Bureau of Investigation under IC 10-13-3-39, or the private agency providing the national background check or expanded criminal history check is responsible for failing to provide the person's national criminal history background check or expanded criminal history check to the health facility within the time required under this subsection.

Sec. 6. (a) A person who operates a health facility is responsible for the payment of fees under IC 10-13-3-39 and other fees required under this chapter.

(b) A health facility may require a person who applies to the health facility for employment that involves direct contact with a patient:

(1) to pay the cost of fees described in subsection (a) to the health facility at the time the person submits an application for employment; or

(2) to reimburse the health facility for the cost of fees described in subsection (a).

Sec. 7. A person who:

(1) operates a health facility; and

(2) violates section 4 or 5 of this chapter;

commits a Class A infraction.

Sec. 8. A person (other than a person denied employment or dismissed under this chapter or against whom a finding is made for the registry of nurse aides under 42 CFR 483.156) who in good faith:

(1) denies employment to an individual or dismisses an individual from employment under this chapter;

(2) testifies or participates in an investigation or an administrative or a judicial proceeding arising from:

(A) this chapter; or

(B) 42 CFR 483 regarding the registry of nurse aides; or

(3) makes a report to the state department or the registry of



1 **nurse aides;**
2 **is immune from both civil and criminal liability arising from those**
3 **actions.**
4 SECTION 6. IC 34-30-2-67.7 IS ADDED TO THE INDIANA
5 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2015]: **Sec. 67.7. IC 16-28-14.7-8 (Concerning**
7 **persons for denying or terminating employment of an individual**
8 **with a criminal history, or reporting to or participating in the**
9 **proceedings of the state department of health or the registry of**
10 **nurse aides).**
11 SECTION 7. IC 35-52-16-16.5 IS ADDED TO THE INDIANA
12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2015]: **Sec. 16.5. IC 16-28-14.7-3 defines a**
14 **crime concerning health facilities.**

